

Guidelines for County Agricultural Commissioners' Adoption of Local Pest Control Operation Regulations

Overview

Date established

August 22, 2003

Enclosure to

Enforcement letter ENF 03-32

Distribution

County agricultural commissioners

Referral

If you have any questions, please contact your senior pesticide use specialist liaison.

Background

California Food and Agricultural Code (FAC) section 11501.1 prohibits local regulation of the registration, sale, transportation, or use of pesticides, except as specifically provided in the FAC.

FAC sections 11503 and 11503.5 provide a limited exception, which allows for the adoption of commissioner regulations.

In 1979, the Legislature created the Office of Administrative Law (OAL) to ensure that state agency regulations comply with California's Administrative Procedure Act (APA) Chapter 3.5, Part 1, Title 2 of the Government Code (sections 11340 through 11359).

Although the APA does not directly apply to county agricultural commissioner (CAC) regulations, FAC sections 11503 and 11503.5 require commissioners to follow the rulemaking provisions of APA insofar as practicable in the adoption of pest control operation regulations that supplement the Department of Pesticide Regulation Director's pest control regulations.

Authority

FAC Division 6	FAC sections 11503-11511 pertain to the adoption of certain regulations by CACs. These sections are in FAC Division 6, “Pest Control Operations.” These sections allow CACs to adopt regulations that are supplemental to those of the DPR Director.
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FAC section 11503	Section 11503 authorizes regulations that govern the conduct of pest control operations, and the records and reports of those operations. Regulations adopted under the authority of section 11503 are subject to review by the Director before they become effective.
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FAC section 11503.5	Section 11503.5 pertains only to agricultural production within a quarter of a mile of schools. Regulations adopted under the authority of 11503.5 become effective in 30 days unless disapproved by the Director.
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FAC section 11738	Under FAC section 11738, a CAC’s supplemental pest control operation regulations may provide for qualification by examination of pest control business registrants, persons in charge of the pest control operations of those registrants, and persons employed by those registrants to operate pest control equipment (other than aircraft) within the county.
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FAC section 11739	Under FAC section 11739, a CAC’s regulations may provide that it is a ground for cancellation of a pest control business’s county registration to operate pest control equipment within the county unless a person qualified pursuant to section 11738 is in charge of the operations, or each unit that is operated within the county is under the personal direction of a person qualified pursuant to section 11738.
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Rulemaking Provisions of the Administrative Procedure Act That Are Practicable for the CAC to Follow

CAC requirements summary

CACs are expected to prepare and submit the following documents with the pest control regulations they submit to the Director for review, as the documents are specified in the APA and are practicable for commissioners to prepare or are specified in the FAC:

Provision	Document
1	“Notice of Intention to Adopt Regulations” referenced in FAC sections 11504 and 11505, which contains an “informative summary” referenced in FAC section 11505 and information similar to that found in a DPR notice of proposed adoption of regulations.
2	An initial statement of reasons.
3	The text of the commissioner’s regulations as proposed and as adopted.
4	A final statement of reasons, in which the CAC responds to all comments received during the comment period regarding the CAC’s proposed regulations.

Regulation Review Standards

Introduction	The CAC should develop the regulations using the standards that the Director must consider when reviewing adopted regulations.
Necessity	There is substantial evidence to show that the regulations are needed.
Authority	Refer to provisions that allow a CAC to adopt the regulations (FAC sections 11503 or 11503.5).
Clarity	The proposal is written so that persons directly affected can easily understand the meaning of the regulations.
Consistency	The proposed regulation is not in conflict or contradictory to existing provisions of state or federal law or regulations.
Non-duplication	The proposed regulation does not duplicate any existing state or federal regulation.
Review and approval of FAC 11503 and 11503.5 by Director	<p>FAC section 11503 requires that the DPR Director review and approve regulations of the CAC before it becomes operative. The Director shall consider the necessity, clarity, authority, and consistency of the regulation, as defined by the Government Code. Title 3, California Code of Regulations section 6110(a) also requires the Director to prepare a report and post for public comment 45 days prior to approval.</p> <p>If approved, the CAC's regulation will be filed with the Director (FAC section 11510).</p> <p>Upon notification by the Director that a CAC's regulation has been approved, the CAC should notify all affected parties that the regulation has been approved and the regulation's effective date. The CAC should keep a complete record of the proceedings on file.</p> <ul style="list-style-type: none">• <u>Note</u>: All of the above also applies to FAC 11503.5 except under FAC section 11503.5, the CAC's regulation becomes effective 30 days after submittal by the CAC, unless expressly disapproved by the Director (FAC section 11510).

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Regulation Review Standards, Continued

Emergency regulations

If, in the opinion of the CAC, the public health, welfare, or safety requires that any regulation take effect immediately, the CAC shall designate it as an emergency regulation. The CAC shall specify in writing, the facts, which constitute the necessity for the emergency regulation. The CAC should forward the written “Statement of Emergency” together with the completed regulation action to the Director. An emergency regulation becomes effective on the date it is approved by the Director (FAC section 11511).

California Environmental Quality Act

Definition The California Environmental Quality Act (CEQA) is found in Division 13 of the Public Resources Code (PRC) section 21000.

PRC section 21151 requires CACs, as local agencies, to prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment.

Determination If, after an initial study, the CAC determines that the proposed project (the regulation adoption) will not have a significant effect on the environment, the CAC may declare that determination in a negative declaration, and no environmental impact report is required.

When developing regulation that supplement DPR's pest control operation regulation, CACs should consult with the appropriate county agency having responsibility for county CEQA compliance to ensure the CAC has complied with CEQA.

Notice of Intention to Adopt Regulations

**Suggested
county
consultation**

DPR encourages the CAC to consult with county counsel, county administrator, or any other county authority normally consulted when making a decision of this magnitude before proceeding with the proposed regulation.

Senior review

DPR encourages the CAC to review the “Notice of Intention to Adopt Regulations” and the text of the proposed regulation with their DPR senior pesticide use specialist liaison prior to publishing the notice.

**Publication of
notice**

The CAC must publish one time, in a newspaper of general circulation in the county, the CAC’s “Notice of Intention to Adopt Regulations.”

FAC section 11504 requires the CAC to make this publication “at least 10 days in advance of the time the regulations are to be adopted, amended, or repealed.” However, the CAC should make the newspaper publication at least 45 days in advance of the closing date by which the interested persons can submit statements, arguments, or contentions to the CAC in writing or orally at a public hearing, since the CAC’s “Notice of Intention to Adopt Regulations” will provide for at least a 45-day public comment period.

The APA requires a minimum 45-day public comment period, and that is an APA provision that is practicable for the CAC to follow.

**Mailing of
notice**

FAC section 11506 requires the CAC to mail a copy of the CAC’s “Notice of Intention to Adopt Regulations” to each pest control business that has registered with the CAC (as specified in Article 2 of Chapter 4 [Pest Control] of FAC Division 6 [beginning with section 11731]).

In addition, the CAC must mail a copy of this notice to any other interested person that has filed a request to receive notice of such proceedings.

FAC section 11506 requires the notice to be mailed “at least 10 days prior to the date set for the adoption, amendment or repeal of the regulations” However, for the same reasons set forth above, the CAC should mail the “Notice of Intention to Adopt Regulations” so that it will be received at least 45 days prior to the closing date for receiving comments.

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Notice of Intention to Adopt Regulations, Continued

**Consideration
of comments**

The CAC should respond to the relevance and/or merit of all comments made either in writing or orally before adopting any regulation (FAC section 11508).

**Sample forms
and other
information**

Sample forms for various documents the CACs should utilize and submit to the Director with the CAC's regulations are attached.

Other information the CAC should submit to the Director with the CAC's regulations include:

- Information showing that the CAC's "Notice of Intention to Adopt Regulations" was published in a newspaper of general circulation in the county.
 - An affidavit of the individual who mailed the notices (including e-mails) certifying that on a specified date, notices of intention to adopt regulations, enclosed in sealed envelopes with postage thereon, were deposited in the U.S. mail addressed to the persons named.
 - A list of the names and addresses of the pest control businesses registered with the CAC and the other persons to whom the notices were mailed.
 - Copies of all written comments received.
 - A copy of the taped recording or transcript of the public hearing, if one was held.
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